

1 IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF IOWA

3 UNITED STATES OF AMERICA,)
4 Plaintiff,)
5 VS.) 18-CR-2034
6 RANDY CONSTANT,)
7 Defendant.)

9 APPEARANCES:

10 ATTORNEYS JACOB A. SCHUNK AND ANTHONY R. MORFITT,
11 U.S. Attorney's Office, 111 Seventh Avenue S.E., Box 1,
Cedar Rapids, Iowa 52401, appeared on behalf of the
United States.

13 ATTORNEY MARK E. WEINHARDT, Weinhardt Law Firm,
2600 Grand Avenue, Suite 450, Des Moines, Iowa 50312,
appeared on behalf of the Defendant.

15 SENTENCING HEARING,

16 HELD BEFORE THE HON. C. J. WILLIAMS,

17 on the 16th day of August, 2019, at 111 Seventh Avenue
18 S.E., Cedar Rapids, Iowa, commencing at 3:58 p.m., and
19 reported by Patrice A. Murray, Certified Shorthand
20 Reporter, using machine shorthand.

21 Transcript Ordered: 1/10/20
Transcript Completed: 1/30/20

23 Patrice A. Murray, CSR, RPR, RMR, FCRR
United States District Court
24 111 Seventh Avenue S.E., Box 4
Cedar Rapids, Iowa 52401-2101
25 (319) 286-2338

1 (The following proceedings were held in open court.)

2 THE COURT: All right. The matter now before
3 the Court is United States of America versus Randy
4 Constant, Criminal Case Number 18-CR-2034. This matter
5 comes on for a sentencing hearing. The United States is
6 represented by Assistant United States Attorneys Jacob
7 Schunk and Tony Morfitt. The defendant is personally
8 present and represented by Attorney Mark Weinhardt.
9 Senior United States Probation Officer Angie Myhlhousen,
10 who is the author of the presentence report that appears
11 at document number 28, is also present in the courtroom.

12 On December 20, 2018, the defendant pled guilty to
13 Count 1 of a one-count information that charged him with
14 the crime of wire fraud in violation of Title 18 United
15 States Code Section 1343. That crime is punishable by up
16 to 20 years in prison without the possibility of parole.
17 After the defendant has served his prison sentence, the
18 Court can place the defendant on supervised release for
19 up to 3 years. Probation is an option. And were the
20 Court to impose probation, it would be for a term of 1 to
21 5 years. The Court can impose a fine of up to \$838,835.
22 The Court must impose a \$100 mandatory special
23 assessment, and there is restitution at issue in this
24 sentencing hearing.

25 Mr. Schunk, on behalf of the United States, have you

1 had a full and fair opportunity to review the presentence
2 report in this case?

3 MR. SCHUNK: Yes, Your Honor.

4 THE COURT: Does the government have any
5 outstanding objections to the calculation of the advisory
6 guidelines or anything else in that report?

7 MR. SCHUNK: No, Your Honor.

8 THE COURT: Thank you. Mr. Weinhardt, on
9 behalf of the defendant, did you and your client have a
10 full and fair opportunity to review the presentence
11 report in this case?

12 MR. WEINHARDT: We did, Your Honor.

13 THE COURT: Does the defendant have any
14 outstanding objections to the calculation of the advisory
15 guidelines or anything else in the report?

16 MR. WEINHARDT: We have certain objections that
17 were noted by the probation officer, but nothing that
18 requires the action of the Court.

19 THE COURT: Thank you, Mr. Weinhardt. Can you
20 make a brief record, sir, about how you went through this
21 report with your client.

22 MR. WEINHARDT: Yes, Your Honor. Both at the
23 draft stage when we worked on objections and later in
24 preparation for this hearing we discussed the presentence
25 report. We discussed it on one occasion in person; we're

1 separated by some distance. But we discussed it at
2 length by telephone, going paragraph by paragraph; and
3 exchanged multiple e-mail messages where he would suggest
4 factual things and so forth, and then I would turn those
5 into objections, or there were items we discussed for
6 today's hearing.

7 Ultimately, many of the issues that Ms. Myhlhousen
8 has noted as factual objections on our part are things
9 that are the product of our interaction.

10 THE COURT: Thank you, Mr. Weinhardt.

11 Mr. Constant, I know from the presentence report, it
12 appears you had the ability -- or your English skills are
13 such that you were able to read this report on your own,
14 sir.

15 THE DEFENDANT: Yes, sir, I did.

16 THE COURT: You can remain seated, sir.

17 THE DEFENDANT: Thank you.

18 THE COURT: Do you feel like you've had
19 sufficient time to go through this report with your
20 attorney?

21 THE DEFENDANT: Yes, sir.

22 THE COURT: When you met with Mr. Weinhardt,
23 was he able to answer any questions you had about this
24 report, sir?

25 THE DEFENDANT: Yes, sir.

1 THE COURT: Do you have any questions today
2 about this report?

3 THE DEFENDANT: No, Your Honor.

4 THE COURT: All right. Let's turn then to the
5 calculation of the advisory guidelines as set forth in
6 the report. That begins at page 11 of the report. The
7 defendant has been assessed with a base offense level of
8 7 at paragraph 25. There is a 24-level upward adjustment
9 or enhancement based on the loss amount in this case at
10 paragraph 26. There is a 2-level enhancement at
11 paragraph 27 for the number of victims involved in the
12 offense. And there is a 2-level enhancement at paragraph
13 28 for use of sophisticated means. There's also a
14 4-level enhancement under section 3B1.1(a), reflected at
15 paragraph 30, for an aggravating role in the offense as
16 an organizer or leader of criminal activity involving
17 five or more participants. That gives us an adjusted
18 offense level of 39.

19 The defendant has pled guilty, and so the Probation
20 Office has awarded him with a 2-level reduction for
21 acceptance of responsibility under section 3E1.1(a).

22 Mr. Schunk, what is the government's position
23 regarding whether the defendant should receive an
24 additional 1-level reduction for entering a timely plea
25 under section 3E1.1(b)?

1 MR. SCHUNK: The United States so moves.

2 THE COURT: That's granted. So with the
3 3-level reduction for acceptance of responsibility, the
4 defendant's total offense level would be 36. The
5 defendant has no criminal history, and so he falls in
6 criminal history category I. So with a total offense
7 level of 36, criminal history category I, that leaves us
8 with an advisory guideline range of 188 months' to
9 235 months' incarceration.

10 In preparation for today's hearing, I have, of
11 course, reviewed in detail the presentence investigation
12 report in this case. I've also reviewed the parties'
13 pleadings, and they are voluminous in this case, as they
14 have been with the other ones. At document number 31,
15 the government filed its opening brief. The defendant
16 filed a sentencing memorandum at document number 32. At
17 document number 33, the defendant filed 98 pages of
18 letters in support. At document number 34, the defendant
19 filed a motion for a downward departure and variance. At
20 document number 35, the government filed a resistance to
21 the defense motions. And at document number 36, the
22 government filed a supplemental sentencing memorandum.

23 Mr. Schunk, have I identified all the relevant
24 pleadings pertinent to this sentencing hearing, sir?

25 MR. SCHUNK: Yes, Your Honor.

1 THE COURT: And Mr. Weinhardt?

2 MR. WEINHARDT: Yes, Your Honor.

3 THE COURT: All right. There's a number of
4 issues before the Court. The first of which is the
5 matters brought up during the omnibus hearing we had this
6 morning concerning 1B1.1 and the loss amount. There were
7 arguments made for a downward departure and variance in
8 relation to those. I am denying the motion for a
9 downward departure or variance regarding the loss
10 calculations under 1B1.1. I will issue a written
11 memorandum that outlines in greater detail my reasoning
12 behind this, but in summary, I find that application note
13 2B1.1, note 21(C), which suggests there could be a
14 grounds for a downward departure, should not apply in
15 this case.

16 That departure -- that section application note
17 suggests that when you are looking at the total harm to
18 victims in the aggregate, if no individual victim was
19 suffering a significant harm, that a downward departure
20 may be appropriate. The problem with that application
21 here is that the defendant is not being held accountable
22 for the harm to the ultimate victims in this case. He's
23 being held accountable for the net gain that he received.
24 Even if I found this to be an applicable application
25 note, in this case I find that the nature of the harm

1 caused here is such that the -- a downward departure
2 would not be appropriate under that application note
3 because of the extreme incalculable harm caused to the
4 consumers who are the end users here.

5 Regarding a downward variance, regarding application
6 note 3(F) (v), I recognize that I can have a policy
7 disagreement with the guidelines and on that basis vary
8 downward. I do not have a policy disagreement with
9 application note 3(F) (v). I find that it does apply in
10 this case and should apply in this case. I find that
11 this was a fraud that was committed in relation to goods
12 for which government regulatory approval was needed.

13 In committing a fraud behind the shield of the
14 United States government, it creates a greater harm to
15 the market, to the confidence of consumers, and to the
16 confidence in the United States government. Fraudsters
17 who take advantage of that trust to peddle fraudulent
18 goods and services wreak greater harm than those who
19 don't. *Caveat emptor*, the Latin phrase meaning "buyer
20 beware," reflects the healthy skepticism that all
21 consumers should have about the representations made by
22 sellers about their goods and services. When, however,
23 as here, the product or service is purportedly vetted by
24 the United States government, it is encouragement to
25 consumers that they need not beware and they can trust in

1 the goods that are being sold to them. Swindlers who
2 take advantage of that shield jeopardize the confidence
3 consumers have in the market and confidence the consumers
4 have in the United States government.

5 I understand the defense distinguishing this
6 particular regulatory scheme over these goods, because
7 there is not necessarily a direct harm that's caused by
8 the disbursement of goods that are not covered here. In
9 this particular case, I think for me to conclude that
10 Congress -- or that this guideline should not apply to
11 organic -- certified organic goods based on that
12 distinction would be having me substitute my judgment as
13 an unelected official for that of Congress. I find that
14 there is nothing in application note 3(F)(v) that bases
15 its application on whether, in fact, the regulatory
16 scheme is based on a particular harm that may be caused
17 to the public, and so I'm not going to vary downward on
18 that ground.

19 Nor am I going to vary downward on the argument that
20 because the ultimate consumers may not have known that
21 they were harmed, that somehow the harm did not occur or
22 it's not that significant. Thousands upon thousands of
23 consumers paid for products they did not get and paid for
24 products that they did not want, and that is an
25 incalculable harm that is not reflected in the loss

1 amount in this case which is tied to the gross gain and
2 not the harm to the victims.

3 There is argument that the guidelines under 1B1.1,
4 particularly as we get up in the loss amounts, as we are
5 here at \$125 million, disproportionately punishes people
6 for loss amounts that may not be proportionate to the
7 criminal culpability of the defendant, and I think there
8 is some merit to that argument. On the other hand, in
9 this case -- and so I find some merit in the idea that
10 the loss amount in this case does not necessarily
11 accurately reflect the criminal culpability of the
12 defendant. Whether it was \$125 million or \$10 million,
13 the criminal culpability in some ways is the same to some
14 degree.

15 On the other hand, I also find that that guideline
16 provision is inadequate to reflect the collateral harm
17 that was caused by the defendant's crime in this case
18 that is not reflected in the guidelines. There is harm
19 to competitors. There is harm to other people in the
20 distribution chain whose goodwill in the marketplace and
21 reliability and reputation were harmed as well by the
22 defendant's fraud, and that is not accounted for by the
23 guidelines in the loss amount.

24 And so while I find that the loss calculation amount
25 in 1B1.1 is an imperfect estimate of moral and criminal

1 culpability, for purposes of me attempting to determine
2 what an appropriate sentence is under 3553(a), I find
3 that it is close enough to measuring that harm that a
4 variance, a downward variance, is not appropriate; and so
5 I deny the downward motion for variance and downward
6 departure motion incorporated in the argument and briefs
7 on the matters taken up at the omnibus hearing this
8 morning.

9 We have a number of other issues we need to take up
10 here though. There is another pending variance motion
11 for other grounds that has been made. At this point
12 though, I'd like to speak with counsel and Mr. Constant
13 at sidebar.

14 (A discussion was held at sidebar and sealed by the
15 Court.)

16 (The following was held in open court.)

17 THE COURT: All right. The new sentencing
18 range in this case is going to be 122 to 153 months.

19 There is a pending motion for a downward variance.
20 And so I think the way we'll proceed is, Mr. Weinhardt,
21 it's your motion, I'll hear from you first; I'll hear
22 then from the government; and then I'll hear from
23 Mr. Constant if he wishes to speak on this matter.

24 Before we turn to the downward variance motion,
25 Mr. Schunk, are you aware of any other outstanding issues

1 that we need to address in this sentencing hearing?

2 MR. SCHUNK: The only issue, Your Honor, would
3 be the issue of restitution to USDA. In my briefing, we
4 discussed restitution. I did not specifically address
5 restitution to USDA. It is set forth by Probation. I
6 would note the amount of that restitution is \$205,604,
7 Your Honor.

8 THE COURT: I also noted that. And I looked at
9 the plea agreement that the parties have reached, and I
10 noted that I believe it's at paragraph 13I perhaps, or
11 14I, that the parties stipulated that the restitution --
12 that the USDA was harmed in that amount as well. And so
13 from my view of that, I concluded that there was
14 sufficient factual basis for determining that loss amount
15 for purposes of restitution based on the defendant's
16 stipulation to that fact in the plea agreement.

17 Mr. Weinhardt, is the defendant disputing the amount
18 of the restitution owed to the USDA or that that money is
19 owed to the USDA?

20 MR. WEINHARDT: No, that is stipulated to, Your
21 Honor.

22 THE COURT: All right. Very good.

23 All right. Anything else then before we turn to the
24 variance motion, Mr. Schunk?

25 MR. SCHUNK: No, Your Honor.

1 THE COURT: All right. Mr. Weinhardt, I'll
2 hear from you now.

3 MR. WEINHARDT: Thank you, Your Honor. Your
4 Honor, I'm seeking a downward variance on a variety of
5 grounds that are all captured generally within
6 18 USC 3553(a). But just for record purposes, I want to
7 make clear that I am reurging all of the grounds that we
8 argued in the omnibus motion this morning. In other
9 words, just to be plain, everything that I argued to the
10 Court this morning on behalf of all of the defendants,
11 I'm arguing specifically on behalf of Mr. Constant. I
12 think that was clear, but I just wanted to make sure
13 everybody understood that.

14 So, Your Honor, I will discuss the 3553(a) factors
15 in sequence and talk about why I think collectively they
16 amount to a situation where Mr. Constant should be
17 granted a downward variance from the adjusted guideline
18 range that the Court just announced.

19 First of all, I do believe that -- although the
20 Court has rejected the specific arguments about 2B1.1
21 overstating the seriousness of the offense this morning
22 as a specific basis for a downward variance, I believe
23 that when the Court considers the entirety of all of the
24 factors, one of the things that it does look at is the
25 relative culpability of this sort of fraud defendant

1 versus other sorts of fraud defendants. And so the Court
2 will recall what I discussed about the telemarketing
3 fraud defendant or the Ponzi scheme defendant and where
4 people wind up on the bell curve of criminal culpability.
5 I still believe, even if this is not a basis because of
6 the harm to the individuals, that all by itself it
7 changes the guideline approach here.

8 I do believe that, as the Court looks at the
9 severity of this offense, that the guilty mind of this
10 defendant is different than it is in some of those other
11 cases, because he is not plucking money that people live
12 on from their bank accounts and he's not plucking food
13 from their tables and so forth. And so I do think that
14 that's an important consideration.

15 And the Court, even in denying the specific motions
16 argued this morning, noted that as we get higher and
17 higher on the 2B1.1 scale, there becomes more and more
18 challenge to whether or not that scale truly matches the
19 criminal culpability. Here, Mr. Constant is considerably
20 higher on that same scale than any of the defendants
21 previously sentenced today. He's 6 levels higher, and
22 those 6 levels, at the area where Mr. Constant is, make a
23 huge difference. So for the Nebraska farmers who were
24 sentenced earlier this afternoon, those 6 levels make a
25 difference to them of about 20 months. For

1 Mr. Constant -- not for the moment considering the matter
2 that we just took up in private conference, for
3 Mr. Constant though, 6 levels produce a swing of
4 91 months. And so I do think it is a relevant
5 consideration for Mr. Constant, the point that the -- the
6 extent to which the monetary loss here is a tail wagging
7 a dog.

8 A second thing that has not been discussed yet today
9 about the nature and circumstances of the offense that I
10 want to discuss is that the offense is actually really
11 simple, a simple thing to almost fall into, and here's
12 what I mean. The Court could get the assumption by
13 listening to the arguments today, if not reading the
14 documents carefully, that we certify grain as being
15 organic in this country. We don't certify grain as being
16 organic. We certify land as being organic, and then the
17 grain that is grown on that land is sold with a
18 certification attached saying it was grown on this land
19 and the land is certified; and, therefore, buyer, you can
20 assume that this is organic grain.

21 Well, the process of pairing a shipment of grain
22 with a certification attached to a piece of land, that is
23 basically on your honor. No one comes to inspect that.
24 That's just a matter of the grower saying here's my
25 certification and here are my carloads of grain. Well,

1 it's really easy -- and I submit that Mr. Constant is not
2 by any means the first person to think of it -- to couple
3 that certification with more carloads of grain than were
4 actually grown on that land. That's all that happened
5 here, is that some additional carloads were claimed to
6 have come from the land that was in fact certified, so
7 that more organic grain was claimed to have come from
8 those acres than could have possibly been grown on those
9 acres. And when Mr. Constant and others, some yet
10 unindicted, realized how simple this was, then the idea
11 grew from there. But this is not something that was of
12 complex design and complex conception at the start.
13 Instead, it was simply a matter of using the same
14 certification twice, not once, and then it grew from
15 there.

16 Now, absolutely it's reprehensible that Mr. Constant
17 grew it in the way that he did and that it reached the
18 magnitude that it did, but it is not something where a
19 criminal mastermind drew a Rube Goldberg scheme to try to
20 cheat the markets. It was actually much simpler and much
21 more difficult for that reason to resist than that. By
22 the way, just record support for the idea that we certify
23 land and not grain among other places would be in
24 paragraph 9 of the presentence report.

25 So we heard earlier in other sentencings that this

1 was a crime of opportunity for the Nebraska farmers, and
2 absolutely it was. A little less so but to some degree
3 this was also a crime of opportunity for Mr. Constant.

4 And then the other thing that I want to talk about
5 regarding the nature and circumstances of the offense is
6 that Mr. Constant was plainly the leader and the
7 organizer of this, although there is an unindicted
8 individual who goes right up alongside him in that. And
9 Mr. Constant fully accepts the liability that comes with
10 leader and organizer, and I know that this Court in
11 sentencing other individuals pointed out that they
12 weren't the leader and organizer and that they were
13 brought into this by others. My point here simply is
14 that Mr. Constant has received and did not object to a
15 4-level enhancement for the leader/organizer phenomenon
16 here. And my only plea to the Court about that is, he
17 shouldn't be hit any harder than that, because, again,
18 when you are up into the 30s of the levels, a 4-level
19 swing is a lot of years. And so, yes, he was the leader
20 and the organizer of this, but not in a way that deserves
21 a variance upward from the level of responsibility that
22 the guidelines attach to this.

23 Now I would like to talk about Mr. Constant's
24 history and characteristics. And from the moment we sat
25 down with him in our office -- and my partner, Todd

1 Lantz, is not here with me today, but he and I had the
2 first meeting and worked together on this case. The
3 incongruity between everything else that you perceive
4 about Randy Constant when you talk to him and get to know
5 him and this offense is just shocking. The Court in an
6 earlier sentencing said that there are, theoretically at
7 least, all good people and there are all bad people but
8 there are very few of either -- or very few all good,
9 that's for sure. But this is a situation in which we
10 have an individual with so much good, and then this
11 stunning year's long blemish on all of that goodness.

12 So I want to talk about because -- if there is ever
13 a time to talk about the good things in somebody's life,
14 it is at the sentencing for the only crime of which they
15 have ever been convicted. So first, with the simple
16 stuff, his only two criminal offenses heretofore, if they
17 are criminal in the state where they happen, are two
18 speeding tickets. He has no history of any kind of
19 substance abuse, no history of any kind of mental
20 problems, no history of any sort of violent conduct or
21 anything of that sort.

22 He almost instantly agreed to cooperate with the
23 government's investigation in July of 2017 when he first
24 retained our firm, and as such, has effectively been
25 under supervision ever since then. He's formally been

1 under supervision since December when he pleaded guilty,
2 but as a practical matter, the government is watching him
3 and is going to know and care deeply if he does anything
4 that's an illegal transgression and, of course, he's had
5 no problems on effectively that 2 years of supervision.

6 We've submitted a very large number of character
7 letters in this case, and I appreciate the time that I
8 know the Court has taken to go through with -- or go
9 through all of them. I appreciate the Court's patience
10 with that process and probably our patience [sic] in not
11 numbering them the way that the local rule calls for in
12 this district. But those letters are very revealing, and
13 they tell the Court a lot of things about Mr. Constant.

14 First, they tell the Court about Mr. Constant's
15 unflagging and lifelong work ethic. This is somebody who
16 throughout his life has had the foot on the gas in terms
17 of trying to better himself and better the people around
18 him, and not just in order to earn money, but also to
19 help the lives of other people around him. More than
20 once I think in those letters he was described as the
21 pillar of the community in Chillicothe, Missouri, a city
22 of about 10,000 people. He was on the school board for
23 seven years. He was its president for two. He led
24 numerous other boards and committees. And he was a
25 behind-the-scenes leader in all manner of civic

1 development. And so things were built, things were
2 organized, things were paid for, and all of that was by
3 Randy Constant working behind the scenes.

4 If he is putting money into something, he is doing
5 it anonymously. If he is doing the work and the
6 leadership, he is doing so quietly. He is not trying to
7 take credit for these things, but he's making a
8 tremendous difference in his community.

9 He has a strong religious background. He's been a
10 strong member of the United Methodist Church for many,
11 many years. He has been a church leader in various
12 capacities, but I was particularly struck by all of the
13 youth mission trips that he led, so he would take youth
14 from that church to other parts of the country, to do
15 Habitat for Humanity housing, to go to Mississippi after
16 the hurricane in 2006 to try to help people rebuild.

17 It's also interesting that throughout those letters
18 he is lauded by people, who he's known since childhood in
19 some cases, but also by people who are much younger than
20 he is, people who are even younger than his own children,
21 all of whom find his commitment to helping people and to
22 trying to make their lives better. This is a person
23 who -- for various people, he's enabled them to have an
24 automobile because he bought one for them; or a new unwed
25 mother, who comes into town and doesn't know how to buy a

1 car because she's never done that before, and so he takes
2 her out and he does that with her, educates her about the
3 process, makes sure that she doesn't get ripped off; or
4 he just loans his own car to somebody for weeks on end.

5 He doesn't just help people move, he gets the truck
6 to help them move and then he gives them furniture of his
7 own to put into their residence. He funded travel for
8 people who were in need. There's an entire family of
9 people that the Court read about where the mother had to
10 go to San Diego because that was one of two places in the
11 country, as I recall, where she could have the open-heart
12 surgery that would remove life-threatening blood clots
13 from her lungs, and he arranged for the family to be able
14 to travel to be able to be with her throughout that
15 entire ordeal.

16 He was in Chillicothe for years and years the Secret
17 Santa for more than a hundred people, most of them people
18 of more limited means, and especially public servants,
19 people who would find the Secret Santa package on their
20 doorstep in the days leading up to Christmas. And for
21 years they didn't know who that was because he wanted
22 truly to make Secret Santa secret, but he was the one who
23 tried to make the holidays a little bit brighter for
24 those people.

25 The Court read about a teenager who is facing

1 leukemia and has to go to Children's Hospital to receive
2 very high doses of leukemia [sic] and she doesn't have a
3 cell phone to be able to communicate with her peers at an
4 age where that's just how kids do it nowadays. Randy
5 Constant shows up on the second day of her
6 hospitalization in the room with a cell phone that he's
7 obtained for her and that he pays for so that she's able
8 to do that.

9 More recently, when he lost absolutely everything as
10 a result of this episode and he's working in Florida
11 after the recent hurricanes to help people clear out
12 their debris and so forth, you heard that after working
13 hours were done, in the evening he would work unpaid to
14 help people clear debris out of their yards, uprooting
15 trees and things like that, and making sure that the
16 older folks aren't -- you know, "the older folks"; he's
17 60 -- but he's making sure that the older folks there
18 aren't taking unnecessary risks with saws or equipment
19 and so forth, and so he's out there doing it himself.

20 This is a man who -- in big applications like the
21 school board and in little applications like the leukemia
22 patient with the cell phone, he has touched many, many,
23 many lives. That city of 10,000 people looks and feels
24 different and better because Randy Constant has been
25 living in it for all of these years.

1 Today is the 39th wedding anniversary for Randy and
2 his wife, Pam. And she and all of these family members,
3 knowing all of the warts, have stood behind him, and
4 they're here supporting him here today. And she said in
5 her letter, "You expect bad people to do bad things.
6 This is a good person who did a bad thing." And that is
7 the trying contradiction in this case.

8 I've represented many, many, many people who have
9 been accused of doing heinous things. And long, long ago
10 I prosecuted a whole lot of them. I struggle to find a
11 greater contradiction in a human being than the
12 contradiction that I find here. Without betraying
13 attorney-client confidences, it's usually the case that
14 when we have a client who is facing something in the
15 guidelines up into the teens or the 20s or for sure the
16 30s, that there are other character flaws; there are
17 other things that led them to where they are.
18 Mr. Constant is just a real puzzle, a -- that's what I
19 have to say. He's a puzzle. But if there's ever a day
20 where he gets credit for all of those things that are
21 described in those 98 pages of letters, today is the day
22 that he gets credit for that.

23 The Court, of course, needs to consider things that
24 are publicly meaningful about this sentence, and so the
25 sentence has to reflect the seriousness of the offense,

1 promote respect for the law, and provide just punishment,
2 and I know that the Court is going to do that.

3 The Court needs to know that Randy's life, as he
4 knows it and as this family knows it, has entirely
5 collapsed. The Court can see that his net worth is
6 negative by about a million dollars. He has not filed
7 for bankruptcy. He's sought advice about that at our
8 recommendation and has been told bankruptcy is pointless.
9 It wouldn't accomplish him anything.

10 And indeed, he's going to be saddled with a
11 forfeiture judgment that will absolutely be impossible to
12 pay. We can look at these farmers who are in their 40s
13 and they're going through bankruptcy and they're saddled
14 with a million dollar forfeiture judgment, and that is
15 daunting. And maybe they find their way out, maybe they
16 don't find their way out, but for them there is hope.
17 There is no hope that a 60-year-old man pays a
18 nine-figure forfeiture judgment, and so that he will
19 carry with him to his grave.

20 He is out of farming for good. Again, the other
21 defendants sentenced here today are I think out of the
22 organic business, but they're not sure what's going to
23 happen with their ability to get crop insurance and those
24 sorts of things. But in the plea agreement, Mr. Constant
25 has sworn off all of that, and so he's not eligible for

1 any federal farm programs whatsoever, and so he is out of
2 the farming industry. He has to reinvent himself at age
3 60.

4 And he has to now walk around in Chillicothe where
5 he and Pam live in a very small apartment -- and Pam has
6 gone back to teaching, no longer retired. He has to walk
7 around where he was the pillar of the community and be
8 who he is today--a convicted felon and the person who has
9 brought not just shame on himself and shame on the
10 family, but this has gotten enough media attention, it
11 kind of brings some shame to Chillicothe, Missouri, and
12 he has to live with all of that.

13 I know that those are not reasons to say that you
14 get, as the Court put it in a different context, a
15 get-out-of-jail-free card, but it is a reason to keep in
16 mind that there are many powerful ways in which
17 Mr. Constant is being punished here. We understand that
18 for general deterrence that the Court needs to impose a
19 prison sentence. And after the emotional presentation
20 that Tom Brennan and his lawyer made today, if that's
21 true for Tom Brennan, it's absolutely true for Randy
22 Constant. And we get that, and indeed we've never for a
23 minute believed that Mr. Constant was going to avoid
24 prison. But we do believe that a prison sentence does
25 not need to be in the stratosphere in order to get the

1 public's attention in order to make people understand
2 that complying with organic rules and regulations is
3 important.

4 What I don't think the sentence needs to do is
5 anything in order to prevent future crime by this
6 defendant. There has been, we believe, a 180-degree
7 change in whatever that portion of his psyche was that
8 allowed him to use the land certification twice and then
9 a third time and see how it is and keep going. He's
10 responded to this admirably, we believe, by immediately
11 coming to the assistance of law enforcement and bearing
12 his soul. And we know that he is going to go to prison,
13 and that is going to be a shock to his system. And at
14 60 years old, he's not -- no matter what the Court does,
15 even if it grants my best wish, he's not going to come
16 out of prison a young man, and prison is not going to be
17 easy for somebody at his age.

18 The Court needs to think about rehabilitation, but I
19 would say that Mr. Constant has spent two years working
20 very hard at already trying to rehabilitate himself.
21 He's dismantled and liquidated his business interests in
22 all forms. He sold his house and almost everything else
23 of value. He's now working in arduous but relatively
24 simple industries, both damage cleanup and, you know,
25 heavy equipment operator, and then he's learned how to

1 install electric motors, and travels around to do that
2 sort of work.

3 But the other thing that he has done that indicates
4 that he's on the road to rehabilitation is that he has
5 apologized and accepted what he did to a wide number of
6 people. And that is demonstrated by what the people say
7 in the support letters, which is that he's told them
8 everything, that he doesn't hold back, that he doesn't
9 minimize, that he does not make excuses. And, Your
10 Honor, that doesn't come easily. The Court has handled
11 enough criminal sentencings as a prosecutor and a judge
12 to know there aren't very many people who are willing to
13 go even talk to as many people as Mr. Constant talked to
14 to say "I'm in trouble. I did this bad thing. Could you
15 write me a letter," because if you are going to ask for
16 the letter, you have to tell what you did in the first
17 place, and that's a really hard thing for most people to
18 do. It's a hard thing for most clients, in my
19 experience, to do. We have another client, we're trying
20 to get him to do it. We got two letters so far, and he's
21 been working on it for three months. That's a big step
22 in the forward motion of somebody towards trying to
23 rehabilitate themselves, and Mr. Constant is going to
24 talk directly to the Court about it.

25 The last thing that the Court needs to do is

1 consider disparity between this sentence and other
2 similarly situated individuals. I do think -- and we
3 didn't mine the data to show the prevalence of downward
4 variances when you get into the upper ranges of 2B1.1.
5 And those downward variances are not all explained by
6 disagreement with the guidelines. A lot of them are
7 explained by the fact that the crime was committed by
8 somebody like Mr. Constant who had fine character and so
9 forth. But it is I think very common in the data that
10 there are sentences that vary meaningfully lower from
11 what the guidelines would suggest when you get up into
12 the 30's like Mr. Constant is.

13 But I also think as a reference point the Court can
14 consider what happened with the other defendants. And I
15 know Tom Brennan is a different situation because of the
16 military service departure there and his even more
17 advanced age, and we understand that. But in looking at
18 the other two defendants, I think that the Court needs to
19 do something that is reasonably in proportion with them.
20 And I do not think that something that is a substantial
21 multiple of what happened to Mr. Potter and Mr. James
22 Brennan is something that is reasonably in proportion.
23 They are still worth -- or guilty of multimillion dollar
24 offenses.

25 And so my suggestion, my recommendation -- and I'm

1 trying to be realistic. I'm trying not to ask for the
2 moon here, and I'm also not trying -- what I am also
3 trying to do is I'm trying to listen to what the Court
4 did earlier today and listen to its -- the grounds that
5 the Court used and try to come up with what I think would
6 be a reasonable and proportional sentence. And this
7 is maybe one of the, you know, for a white-collar case,
8 one of the larger asks that I've ever made. But I would
9 suggest that the rational and proportional sentence,
10 considering everything that we have discussed, would be a
11 48-month sentence to the Bureau of Prisons. Randy has
12 always known that he's going to go to prison, but he
13 doesn't need to go longer than is necessary. I think
14 that that would accomplish all of the goals that this
15 Court is wrestling with. Thank you.

16 THE COURT: Thank you, Mr. Weinhardt.

17 Mr. Schunk.

18 MR. SCHUNK: Thank you, Your Honor. After
19 having sat here today and listened to the other
20 sentencings and the omnibus hearing and having lived with
21 this case for a couple years now, it is a stunning thing
22 to sit next to Mr. Constant thinking about exactly what
23 this case is, and that is, the largest known organic
24 fraud case in the history of this country. There are no
25 similarly situated defendants, Your Honor. Mr. Constant,

1 as a result of what he did here -- and it wasn't in any
2 stretch of the imagination one choice, but it was
3 hundreds and thousands of choices, over and over and
4 over, from 2010 to 2017 at least. These thousands of
5 times he defrauded consumers. They did not get what they
6 wanted.

7 And I don't want to be redundant with what we talked
8 about this morning, but, Your Honor, the magnitude of
9 this is immense. Even at two times, we're talking about
10 a quarter of a billion dollars of money spent by
11 Americans buying stuff they didn't want. And all of
12 that, not 3 million of it or 5 million of it, like the
13 Nebraska farmers, but all of that \$127 million is due to
14 this defendant. This is an extraordinary -- an
15 extraordinary case, Your Honor. There are no other
16 similarly situated defendants. And the magnitude of
17 this, the complete disregard given to these people who
18 are making these buying decisions over and over and over,
19 for Mr. Constant's selfish needs and financial
20 motivations, Your Honor, a sentence within the guideline
21 range, even at the middle or at the high end of the
22 range, is what's warranted based upon this defendant,
23 what he did, and his specific personal characteristics.

24 Again, I will reiterate -- I will not reiterate
25 everything we talked about this morning in the omnibus

1 hearing. I do want to make a few points though. There
2 was this comparison of sorts drawn between Mr. Constant
3 and the Nebraska farmers. We recognize that Mr. Constant
4 did receive an additional 4 levels as a result of being a
5 leader. Respectfully, Your Honor, even that 4 levels
6 doesn't fully capture though what was occurring.

7 And this idea of Mr. Constant "falling" into this
8 offense, it just doesn't work. Certainly he saw
9 something to exploit. But what you don't fall into is
10 finding other people with absolutely no criminal
11 histories to speak of and getting them to come join you
12 in this massive over-a-hundred-million-dollar criminal
13 enterprise. The 4 levels doesn't account for that. It
14 doesn't account for the fact that he enticed these folks
15 and he eventually led these folks to engage in this crime
16 with him, all of which resulting, again, in thousands and
17 thousands and thousands of purchases, of people buying
18 stuff they don't want and contributing to industries to
19 which they do not want to contribute. He did not fall
20 into this, Your Honor. He saw a weakness, he exploited
21 it, and then he got others to exploit it with him.
22 Because on his own, he could have made money. He had his
23 fields in Missouri, and it could have stopped there. But
24 it wasn't enough for Mr. Constant because he wanted to
25 make more money, so he goes and finds guys like Tom

1 Brennan and he gets them to join him.

2 The 4 levels does not account for the damage he's
3 caused or the depravity of his conduct. This idea
4 that -- the organic certification process, it's the land
5 in the process of getting the grain to the store. Now,
6 sure, it's certified organic land, but the idea that
7 that's on your honor and that -- I'm not going to
8 characterize the regulatory system. Certainly though,
9 there's a sense of trust placed in these folks who are
10 part of the system to do the right thing. And what we
11 know is that Mr. Constant violated that trust. It's not
12 the regulator's fault. It's not the fact that it was
13 easy to do. People follow the rules all the time.
14 Mr. Constant saw a weakness that he perceived and he
15 exploited it over and over again, and he convinced other
16 people to do it as well.

17 Now, the fact though is that Mr. Constant was able
18 to exploit this. And in counsel's words, he was able to
19 do it because the system largely relies on your honor, of
20 which it appears in these regards that Mr. Constant has
21 little. But the point of that is, when we talk about
22 deterrence, it's -- in all likelihood, Mr. Constant is
23 not going to do this again. We recognize that. But
24 because of the trust placed in people in this industry,
25 there absolutely has to be deterrence. And we've been

1 talking about this all day, but it is so undeniably true
2 when you have someone like Mr. Constant, who has the
3 means -- and I mean that both financially, and
4 intellectually, and capacity-wise -- to persuade people
5 to do what he wants them to do, to convince people to do
6 what he wants them to do, the business savvy to make it
7 work and to make it grow. And a system like that, that's
8 based in part on your honor, when that trust is violated,
9 the punishment has to be severe and it has to be
10 significant, and certainly no variance is warranted.

11 In regards to the support letters and these types of
12 things, Your Honor, I would note there is restitution. I
13 don't think the United States has received a dollar of
14 that yet. I'm certainly not aware of any payment toward
15 that judgment. I would also note, and I won't reiterate
16 anything from this morning, but we did move into evidence
17 various exhibits, including stipulations -- I understand
18 the Court has read them -- also relevant to today's
19 proceeding.

20 At the end of the day, Your Honor, I'll come back to
21 where I started, there is no one like Mr. Constant of
22 which we are aware. He exploited a hole in the system
23 that he perceived, and due to greed, he caused others to
24 do it with him, resulting in, in all likelihood, perhaps
25 as much as a quarter of a billion dollars or more in

1 people buying stuff they didn't need in an industry to
2 which they did not want to contribute. There should be
3 no variance. The Court should instead sentence
4 Mr. Constant to a sentence within or even at the top of
5 the advisory guideline range.

6 Thank you, Your Honor.

7 THE COURT: Thank you, Mr. Schunk.

8 Mr. Constant, this is the time in the hearing where
9 you have an opportunity to speak to me directly, to tell
10 me anything you'd like me to take into account in
11 determining your sentence. You don't have to say
12 anything; and if you don't want to say anything, I won't
13 hold that against you in any way. But if there is
14 anything you'd like to say, now is the time to do so. Is
15 there anything you'd like to say, sir?

16 THE DEFENDANT: Yes, Your Honor.

17 THE COURT: You may.

18 THE DEFENDANT: Do I stand or sit?

19 THE COURT: Whatever you are most comfortable
20 with, sir.

21 THE DEFENDANT: I'll stand, please.

22 THE COURT: Very good.

23 THE DEFENDANT: Your Honor, I appear in front
24 of you today to take full responsibility and accept
25 punishment for the crime I committed. Not a day has gone

1 by when I do not regret my crime, and I seriously
2 apologize to the Court for breaking the law.

3 I want to apologize to the many people that I have
4 hurt through this course of conduct. That includes the
5 people that trusted my products were organic when they
6 were not, whether they're grain merchants, farmers and
7 ranchers, or consumers of organic products. The organic
8 system in this country is built on trust, and I violated
9 that trust.

10 In my life, I wanted to positively impact the world
11 by my actions, and in doing so, I've built businesses in
12 grain and in the fish industries. Dedicated people have
13 trusted me, worked in these businesses, and committed
14 themselves to their success. I've left many of them
15 without jobs; and in the grain business, I have left some
16 of them in trouble with the law. I owe an enormous
17 apology to all of them.

18 I want to apologize also to my wife, my treasured
19 children, other cherished family members, my dear
20 friends, for the extreme pain and difficulty I've created
21 and caused, and certainly for the trust that has been
22 fractured as a result of my actions. Despite what has
23 taken a lifetime to build, I recognize now the extreme
24 challenges I face to mend and rebuild the trust and the
25 love of these people. I am forever grateful for those

1 family members and friends who, among other generous
2 things, have had candid conversations with me after they
3 learned of my crime, have been so supportive of us, and
4 written character reference letters to you, Your Honor,
5 on my behalf.

6 Again, not a day or sometimes even an hour has
7 passed where I have not felt remorse for my crime. I am
8 grateful for the love and support of my family and
9 friends, which humble me. Fueled now by my desire to
10 rebuild trust with others and seek positive lawful
11 change, I want to work diligently, to participate fully
12 in rekindling my relationships, and to focus on my
13 rehabilitation. Vocationally, not much has come easily;
14 nevertheless, I obtained and am employed with a
15 commercial driver's license. I've performed hurricane
16 cleanup in Florida and Alabama. I've built greenhouse
17 structures and traveled almost coast to coast installing
18 refrigeration motors in eight different states.

19 Personally, I am focused on my family and friends,
20 interactions, and simplifying my living arrangements.
21 While my future is uncertain, I will do my best to
22 navigate the unknown.

23 Whether in -- or when out of any prison institution,
24 I plan to bring focus and discipline to my own
25 development, as well as emphasize the quality and

1 quantity.

2 I have contributions I can make to enhance the lives
3 of others. I strive to be a learner and a helper. In
4 prison, I'll have opportunities in programs where I can
5 volunteer my talents to help other inmates. In fact,
6 they used to have an inmate-operated business inside the
7 correctional facilities in Canyon City, Colorado, and
8 Forest City, Arkansas. My motivation was to provide the
9 opportunity to build new skill sets and work ethics for
10 those involved. Ironically, I now will be an inmate
11 myself. My mot -- my motivation is the same for myself
12 and others. I need to work on my own rehabilitation as
13 well. I plan to take advantage of any educational and
14 vocational programs that will prepare me for my future in
15 or out of prison. I have short-term and long-term action
16 plans to develop and enhance my nonagricultural industry
17 skills, not for -- or not only for a job but a legit
18 transparent business. I will do my best to rebuild my
19 skill set and my mental health with positivity, and hope
20 to make others and me proud once again of how and where I
21 can contribute. I recognize, Your Honor, that my future
22 is not only in your hands, but it is very importantly in
23 mine. Thank you most respectfully for the opportunity to
24 make this statement.

25 THE COURT: Thank you, Mr. Constant.

1 In arriving at a sentence that is sufficient but not
2 greater than necessary to achieve the goals of
3 sentencing, I have considered all the factors set forth
4 at Title 18 United States Code Section 3553(a). Even if
5 I don't mention each of those factors in my comments here
6 today, I have considered them.

7 Turning first to the nature and circumstances of the
8 offense in this case, which has been discussed at some
9 length already, this is a massive fraud that was -- that
10 was perpetrated on the consumer over a long period of
11 time involving thousands of victims that has caused
12 incalculable damage to the confidence that the American
13 public has in organic products. It has -- while I
14 recognize the Court doesn't have evidence from testimony
15 of other competitors who can demonstrate that they
16 somehow lost out, commonsense and simple logic tells me
17 that by cheating and stealing and lying and selling
18 products for less than the market value, even for organic
19 goods, it drove out of the market and hurt other
20 competitors as well. And so there are so many ripple
21 effects of the harm that arose from this crime that a
22 dollar value simply cannot be placed on it.

23 The defendant's particular role in this is
24 aggravating. He did have a 4-level enhancement for a
25 role in the offense for being an organizer and leader.

1 Generally, I think that accounts and is sufficient to
2 reflect his leadership role. What is more important to
3 me in some ways is -- and I don't know that it's
4 reflected in the 4-level enhancement -- is the collateral
5 damage that was done by people that he brought in and
6 lured into the scheme with him. I was -- I noted that
7 the defendant recognized in his allocution the harm he
8 caused to some of these other farmers that he brought
9 into the scheme, who -- some of whom I sentenced today to
10 prison, who otherwise were law-abiding citizens. And
11 because of the defendant's conduct, they are now going to
12 go to prison. The collateral damage that occurs when
13 somebody commits a crime has such a ripple effect
14 generally, but in this particular case it's significant.

15 Looking at the defendant's history and
16 characteristics, there are a number of things that
17 certainly on the surface look to be mitigating. In some
18 ways though, I find Randy Constant to be somewhat like
19 the organic grain; that is, that he's not what is
20 advertised. On the surface, certainly reflected in these
21 many letters, he was the paragon of virtue in the
22 community, supporting people, donating money, doing
23 positive things for people. Below the surface, he was
24 lying and cheating to achieve those goals. I'm not
25 terribly moved at all by the financial charity reflected

1 in the defendant's past. It is easy to be charitable
2 with somebody else's money. Defense counsel acknowledged
3 that in the sentencing brief. And I did read every
4 single one of the 98 pages of letters of support. One
5 that I'd note indicated, "I now wonder about all the
6 generous anonymous acts of kindness I have heard about
7 over the last decade in town and wonder how many were due
8 to Randy Constant and his stolen money. Trying to find a
9 silver lining, I can say at least he wasn't selfish with
10 the money." But he was.

11 If you look at the stipulation that was filed with
12 the Court today, or yesterday, at 37-1, it lays out some
13 of the selfishness with which the defendant engaged with
14 the ill-gotten gains at the expense of the American
15 public. He paid salaries to family and friends. He took
16 family and friends on trips, vacations, that he paid for
17 with other people's money. He took regular trips to
18 Las Vegas. And I -- I appreciate Mr. Schunk's discretion
19 in talking about the details reflected in this, and I'm
20 going to exercise the same discretion, but the details
21 reflected in the defendant's expenditures with some of
22 the ill-gotten gains shows a person very different than
23 the person he held himself out to be to the community and
24 the person that so many of these people believe even to
25 this day that he is.

1 On the other hand, I did note in reading these
2 letters of support that the defendant did more than
3 simply spend the money that he got illegally. Repeatedly
4 throughout these letters it reflects that he also donated
5 significant amounts of his own time and effort and labor,
6 and there is a real reflection of charitable efforts on
7 his part that is not him simply taking the illegal money
8 and spending it and looking like the good guy, but also
9 reflecting that, in fact, he did do good acts that had
10 nothing to do with the money and that he devoted his own
11 hours and time and effort and thoughtfulness in helping
12 other people, and that's also reflected in these many
13 pages, letters of support.

14 I said this morning in connection -- or this
15 afternoon I guess, in connection with another sentencing
16 hearing that few people are all good or all bad, and I've
17 known more of the latter and I don't know that I have
18 ever met anybody in the former. Most people have both
19 good and bad aspects to them. We all have faults. And
20 so I recognize the fallibility of human nature and that
21 everybody can fall from grace and commit crimes that are
22 somewhat out of character for the individual, and I have
23 to take that into account as well in trying to determine
24 the degree of moral and criminal culpability that should
25 be reflected in a sentence that I will have to impose in

1 this case.

2 It is also important that I take into account all of
3 the goals of sentencing in arriving at a sentence that is
4 sufficient but not greater than necessary to achieve
5 those goals. General deterrence is an important factor
6 here. I agree with Mr. Weinhardt, I am not concerned
7 about specific deterrence. Both the -- Mr. Constant's
8 age and his reaction when confronted by law enforcement
9 about this conduct all suggest to me that we have little
10 to fear of Mr. Constant committing similar crime in the
11 future.

12 There is significant support in the literature,
13 however, that significant sentences and severe sentences
14 are important for purposes of general deterrence.
15 Exactly how severe is completely up to debate, of course,
16 and that's something that we can all disagree on but I
17 have to ultimately reach a conclusion on.

18 It also is important that the sentence reflect the
19 seriousness of this offense, and this is a very serious
20 offense. I recognize in this case that there are
21 mitigating factors. I think there is sincere remorse by
22 the defendant in this case. I think that he is a true
23 criminal history category I, and that he has no prior
24 criminal convictions. He has no drug use, no violence,
25 and so forth, so there's no aggravating factors in his

1 background. But when I am trying to determine if there
2 are sufficient mitigating factors here to call for a
3 downward variance against the aggravating factors that --
4 the collateral damage that has occurred in this case, I
5 ultimately conclude that a downward variance is not
6 appropriate in this case.

7 And so having considered all the factors at Title 18
8 United States Code Section 3553(a), I find a sentence
9 within the advisory guideline range is appropriate. I do
10 find that the mitigating factors that have been argued by
11 defense counsel, both in the brief and in argument here
12 today, though warrant a sentence at the bottom of that
13 adjusted advisory guideline range, and so I'm not going
14 to follow the government's recommendation that I impose a
15 sentence at the middle or at the top of that range.

16 And so, Mr. Constant, it is the judgment of this
17 Court that you are hereby committed to the custody of the
18 Bureau of Prisons to be imprisoned for a term of
19 122 months. It is recommended that you be designated to
20 a Bureau of Prisons facility in close proximity to your
21 family, which is commensurate with your security and
22 custody classification needs.

23 Upon release from imprisonment, you will be placed
24 on supervised release for a term of 3 years. While on
25 supervised release, you must comply with the following

1 mandatory conditions: You must not commit another
2 federal, state, or local crime; you must not unlawfully
3 possess a controlled substance; you must refrain from any
4 unlawful use of a controlled substance; and you must
5 cooperate in the collection of a DNA sample as directed
6 by your probation officer.

7 I hereby suspend the mandatory drug testing
8 condition, finding that you pose a low risk of future
9 controlled substance abuse. In addition, you must comply
10 with the standard conditions of supervision, which will
11 be set out in my judgment order, and with all the special
12 conditions set forth at paragraphs 96 through 100 of the
13 presentence report.

14 It is ordered that you pay to the United States a
15 special assessment of \$100, which will be due
16 immediately. I note that the \$100 special assessment was
17 paid on December 20, 2018, and the judgment will so
18 reflect.

19 You must forfeit to the United States all property
20 set forth in the preliminary order of forfeiture filed on
21 June 24, 2019, at document number 27. I find you do not
22 have the ability to pay a fine, and so no fine will be
23 imposed.

24 It is ordered that you make restitution in the
25 amount of \$205,604, payable to the United States

1 Department of Agriculture. Payment must be made to the
2 United States Clerk of Court for the Northern District of
3 Iowa for distribution to the victim in this case. If any
4 of your court-ordered financial obligations are still
5 owed while you are incarcerated, you must make monthly
6 payments in accordance with the Bureau of Prisons
7 Financial Responsibility Program. The amount of the
8 monthly payments will not exceed 50 percent of the funds
9 available to you through institution or noninstitution
10 resources and will be at least \$25 per quarter. If you
11 still owe any portion of the financial obligations at the
12 time of release from imprisonment, you must pay it as a
13 condition of supervision, and the United States Probation
14 Office will pursue collection of the amount due pursuant
15 to a payment schedule approved by the Court.

16 You must notify the United States Attorney for the
17 Northern District of Iowa within 30 days of any change in
18 your mailing or residence address that occurs while any
19 portion of the financial obligations remain unpaid. I
20 find you do not have the ability to pay any interest and
21 will waive any interest requirement in this case.

22 Mr. Schunk, there are no counts to be dismissed; is
23 that correct?

24 MR. SCHUNK: That's correct, Your Honor.

25 THE COURT: What is the government's position

1 regarding detention of the defendant?

2 MR. SCHUNK: We do not request detention.

3 THE COURT: Mr. Constant, let me talk to you
4 about your options in this case. You have three options.
5 One is to surrender at this time into custody, and if you
6 do that, then your time starts counting today. The
7 second option is that you can surrender to a -- to the US
8 Marshals in the Western District of Missouri at a time
9 and date that I designate. They will then be responsible
10 for transporting you to the location designated by the
11 Bureau of Prisons for you to serve your sentence. The
12 third option is that you can self-surrender to the Bureau
13 of Prisons facility as designated by the Bureau of
14 Prisons as notified by the United States Marshal.

15 Mr. Weinhardt, have you had an opportunity to speak
16 with your client concerning his request in that regard?

17 MR. WEINHARDT: I have, Your Honor. And he
18 elects the third option.

19 THE COURT: Very good. So, Mr. Constant, I
20 will give you the privilege of self-surrender. You must
21 surrender for service of sentence at the institution
22 designated by the Bureau of Prisons as notified by the
23 United States Marshal. You must keep the United States
24 Marshal informed of your current address and phone number
25 until you have reported to the Bureau of Prisons to serve

1 your sentence. Your failure to report as directed may
2 subject you to additional criminal charges. You will
3 remain on release under the supervision of the United
4 States Probation Office under the same terms and
5 conditions previously imposed until you have reported to
6 the Bureau of Prisons to serve your sentence.

7 Mr. Schunk, before I advise Mr. Constant of his
8 rights to appeal, is there anything else on behalf of the
9 United States?

10 MR. SCHUNK: We have the same question, Your
11 Honor, regarding in the event if there were an error in
12 the guideline calculation, whether the Court would impose
13 the same sentence, Your Honor.

14 THE COURT: Thank you, Mr. Schunk. And the
15 answer to that is yes. Considering all the factors at
16 Title 18 United States Code Section 3553(a), even if I
17 have erred in the calculation of the guidelines in this
18 case, I find that a sentence of 122 months to be
19 appropriate in this case.

20 Officer Myhlhousen?

21 PROBATION OFFICER: No, Your Honor.

22 THE COURT: Mr. Weinhardt?

23 MR. WEINHARDT: No, Your Honor.

24 THE COURT: All right. Mr. Constant, let me
25 talk to you about your rights to appeal, sir. If you

1 disagree with the sentence I've just imposed, you have
2 the right to appeal that sentence to a higher court --
3 I'm sorry, I don't remember the plea agreement in this
4 case.

5 Mr. Schunk, is there an appeal waiver in this
6 particular case? I'm thinking there's not.

7 MR. SCHUNK: I'm actually thinking that there
8 may be, Your Honor.

9 THE COURT: All right.

10 MR. SCHUNK: I do not see one, Your Honor.

11 THE COURT: All right. I was thinking there
12 was not one in this case.

13 So, Mr. Constant, if you disagree with my sentence,
14 you have the right to appeal that sentence to a higher
15 court. That court is called the Eighth Circuit Court of
16 Appeals. To appeal to that court, you would have to file
17 a written notice of appeal with the Clerk of Court for
18 the Northern District of Iowa here in Cedar Rapids, Iowa,
19 within the next 14 days. If you fail to file a written
20 notice of appeal with the clerk in the next 14 days, you
21 give up forever your right to appeal the sentence I've
22 just imposed. If you would like to appeal and you cannot
23 afford the services of an attorney to do so, then I would
24 appoint an attorney to represent you on appeal at no
25 expense to you. Do you understand your rights to appeal,

1 sir.

2 THE DEFENDANT: Yes, sir, I do.

3 THE COURT: Do you have any questions about
4 anything we've done here today, sir?

5 THE DEFENDANT: No, sir.

6 THE COURT: Good luck to you, Mr. Constant.

7 Mr. Weinhardt, anything further on behalf of
8 Mr. Constant?

9 MR. WEINHARDT: Nothing further for
10 Mr. Constant, Your Honor.

11 THE COURT: Thank you. Mr. Schunk.

12 MR. SCHUNK: Nothing from the United States,
13 Your Honor.

14 THE COURT: Thank you. That concludes the
15 hearing.

16 (Proceedings concluded at 5:22 p.m.)

1 C E R T I F I C A T E

2 I, Patrice A. Murray, a Certified Shorthand
3 Reporter of the State of Iowa, do hereby certify that at
4 the time and place heretofore indicated, a hearing was
held before the Honorable C.J. Williams; that I reported
5 in shorthand the proceedings of said hearing, reduced the
same to print to the best of my ability by means of
computer-assisted transcription under my direction and
supervision, and that the foregoing transcript is a true
6 record of all proceedings had on the taking of said
hearing at the above time and place.

7 I further certify that I am not related to or
8 employed by any of the parties to this action, and
9 further, that I am not a relative or employee of any
attorney or counsel employed by the parties hereto or
financially interested in the action.

10 IN WITNESS WHEREOF, I have set my hand this 30th day
11 of January, 2020.

12 /s/ Patrice A. Murray

13 Patrice A. Murray, CSR, RPR, RMR, FCRR
14 United States District Court, NDIA
15 111 Seventh Avenue S.E., Box 4
16 Cedar Rapids, Iowa 52401-2101

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